No. 76-746

In the Supreme Court of the United States

OCTOBER TERM, 1976

GEORGE GRAVES, ET AL., PETITIONERS

v.

THOMAS E. SNEED, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

DANIEL M. FRIEDMAN,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioners claim that they are the owners of two tracts of land in Haywood County, Tennessee. In December 1947 petitioners mortgaged the land by executing a deed of trust to secure a promissory note payable to the Farmers Home Administration ("FHA") in annual installments over a period of forty years. In March 1961 they executed two documents in the form of deeds conveying portions of the land to respondent C. A. Rawls, who assumed responsibility for keeping the payments current.

The facts are stated by the court of appeals (Pet. App. 2a-3a).

In 1970 Rawls prepaid the balance due on the note. The FHA accordingly executed a release discharging its lien. The release was executed and recorded without the consent of petitioners. Rawls conveyed the land free of the lien to L. S. McCool.

Petitioners then brought suit in the United States District Court for the Western District of Tennessee against Sneed (the FHA loan officer), the Administrator of the FHA, Rawls and his wife, and the McCools, requesting a cancellation of the deeds to Rawls, an accounting, ejectment, and $100,000 in damages.

The original complaint alleged jurisdiction on the basis of diversity of citizenship. The district court held that there was no diversity jurisdiction because the petitioners and some of the respondents were citizens of Tennessee. Petitioners then sought to amend the complaint to allege jurisdiction under 28 U.S.C. 1331 and 28 U.S.C. 1346(b).

The district court dismissed without prejudice for lack of subject matter jurisdiction (Pet. App. 5a-7a). The court of appeals affirmed (Pet. App. 1a-4a).

The courts below correctly held that petitioners' complaint does not establish federal question jurisdiction under 28 U.S.C. 1331. To establish jurisdiction under that provision, it must be shown that federal law is a direct element in the plaintiff's claim; it is not enough that it is involved remotely or indirectly. *Burgess* v. *Charlottesville Savings & Loan Ass'n*, 477 F. 2d 40 (C.A. 4); *Davidson* v. *General Finance Corp.*, 295 F. Supp. 878 (N.D. Ga.); *Baker* v. *FCH Services, Inc.*, 376 F. Supp. 1365 (S.D. N.Y.). A suit on an agreement between private parties does not raise a federal question merely because the agreement was authorized by federal law or a federal agency has in some way approved it. *Baker* v. *FCH Services, Inc., supra.*

As the court of appeals correctly held (Pet. App. 2a-4a), petitioners' complaint raises only a question of state law: whether the instruments executed to Rawls, though deeds on their face, were intended as security interests. The gravamen of the complaint is that Rawls attempted to acquire and reconvey a fee simple interest in property in which he had only a security interest.

The only allegation in the complaint concerning the federal respondents is that the FHA improperly accepted prepayment of petitioners' loan and released its lien without petitioners' consent. That allegation is irrelevant to the substance of petitioners' claim. The FHA's acceptance of payment of its loan, and the discharge of its lien, have nothing to do with petitioners' entitlement to their land. That entitlement depends exclusively upon state conveyancing law.[1]

Indeed, the FHA is a disinterested party in the dispute between petitioners and Rawls. If under state law the instrument petitioners delivered to Rawls was not a deed in fee simple but a security interest, and if petitioners are therefore entitled to recover their land, then Rawls, by paying the FHA loan, will simply have become subrogated to the rights that FHA had before the loan was paid. In short, this case is nothing more than a traditional action in equity within the exclusive jurisdiction of the state courts.[2]

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

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[1]Accordingly, petitioners' assertion to the contrary notwithstanding, their complaint, properly read, failed to "claim a right to recover under the Constitution and laws of the United States" (Pet. 4) within the meaning of this Court's decision in *Bell* v. *Hood*, 327 U.S. 678.

[2]The courts below also correctly held that the complaint did not state a claim under the Federal Tort Claims Act, 28 U.S.C. 1346(b). First, the Act authorizes suits only against the United States, which was not named as a defendant in the complaint. Second, 28 U.S.C. 2675 requires a plaintiff to exhaust his administrative remedies before he may sue the United States, which petitioners failed to do here.

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